



Federal Employees' Compensation Act<sup>3</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

### **ISSUE**

The issue is whether appellant has met his burden of proof to establish a bilateral knee condition causally related to the accepted factors of his federal employment.

### **FACTUAL HISTORY**

On June 6, 2017 appellant, then a 61-year-old letter carrier, filed an occupational disease claim (Form CA-2) alleging that he developed bilateral knee osteoarthritis due to factors of his federal employment, including standing, walking, bending, lifting, and carrying performed over many years. He noted that he first became aware of his condition and realized its relation to his federal employment on April 28, 2017. On the reverse side of the claim form, the employing establishment indicated that appellant was last exposed to the conditions alleged on December 16, 2014 and that he subsequently retired on August 1, 2015.

In a narrative statement dated April 13, 2017, appellant noted that he had worked at the employing establishment for 31 years. He asserted that he walked five to seven miles a day carrying a satchel weighing up to 35 pounds in order to deliver several hundreds of pounds of mail a day, including packages weighing up to 70 pounds. Appellant also stood for two hours a day casing mail, walked up and down stairs, and entered and exited his vehicle 400 times a day.

On March 5, 2015 appellant underwent bilateral knee x-rays which revealed moderated osteoarthritis in the left medial knee joint and mild osteoarthritis in the right medial knee joint.

In a report dated April 28, 2017, Dr. John J. Walsh, a Board-certified orthopedic surgeon, described appellant's employment duties and noted that he began to experience pain, swelling, and giving way in both knees. He noted that appellant sought medical treatment for his knee condition in 1989 and underwent knee arthroscopy. Dr. Walsh found that during the years that he worked as a letter carrier, he experienced increasing problems with pain and swelling in his knees. He reviewed knee x-rays dated March 5, 2015 and April 23, 2017 and diagnosed bilateral knee osteoarthritis. Dr. Walsh opined that osteoarthritis was the result of repetitive impact loading which caused damage to joint cartilage and resulted in a secondary inflammatory process which further accelerated the deterioration of the joint. He further explained that in the presence of damage to the articular cartilage, chemicals called proteoglycans were released which caused inflammation of the synovial lining of the joint which then led to further breakdown of the articular cartilage, which was characteristic of osteoarthritis. Dr. Walsh opined that appellant's bilateral osteoarthritis was "most likely aggravated" by his work activities including lifting, walking, and climbing. He further found that his work activities "most likely" caused a permanent aggravation of his bilateral knee osteoarthritis. Dr. Walsh concluded that there was no doubt that appellant's high impact loading work activities contributed to the development and progression of his bilateral knee arthritis. He also found that he had permanent impairment as a result of the diagnosed condition.

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<sup>3</sup> 5 U.S.C. § 8101 *et seq.*

In an August 10, 2017 development letter, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence needed, and provided a questionnaire for his completion. In a separate development letter of even date, OWCP requested that the employing establishment provide additional information, including comments from a knowledgeable supervisor, regarding appellant's occupational disease claim. It afforded both parties 30 days to respond.

On September 11, 2017 appellant responded to OWCP's development questionnaire. He indicated that he experienced chronic bilateral knee pain and had enjoyed playing baseball, hockey, and skiing, but could no longer participate in those activities due to knee pain.

In a note dated February 23, 2017, Dr. Richard Joseph, an internist, examined appellant due to his bilateral knee conditions. A left knee x-ray of even date revealed mild osteoarthritic changes in all compartments.

On March 17, 2015 Dr. Taylor diagnosed bilateral knee osteoarthritis, including moderate osteoarthritis of the left medial knee joint and mild osteoarthritis of right medial knee joint.

By decision dated November 16, 2017, OWCP denied appellant's occupational disease claim, finding that he had not submitted medical evidence establishing causal relationship between his diagnosed bilateral knee osteoarthritis and the accepted factors of his federal employment.

On November 21, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. In a letter dated May 14, 2018, appellant, through counsel, modified his request for a review of the written record. He submitted additional medical records.

In a May 14, 2018 report, Dr. Walsh noted that appellant was exposed to more than 30 years of impact loading activities at the employing establishment. He opined that there was "no doubt that the high impact loading work activities contributed to the development and progression of his bilateral knee arthritis."

By decision dated July 30, 2018, the hearing representative affirmed the November 16, 2017 decision.

On January 22, 2019 appellant, through counsel, requested reconsideration.

By decision dated March 26, 2019, OWCP denied appellant's request for reconsideration of the merits in accordance with 5 U.S.C. § 8128(a).

On April 10, 2019 appellant again requested reconsideration of the July 30, 2018 decision and submitted a January 18, 2019 report, wherein, Dr. Walsh opined that appellant's work activities contributed to his bilateral knee osteoarthritis which was present prior to his retirement. He noted that he reviewed appellant's x-rays from prior to his retirement which he found showed significantly degraded articular cartilage in both knees. Dr. Walsh opined that the deterioration process had been ongoing for quite some time including the time period during which appellant was performing heavy impact loading duties of his federal job. He further explained that his prior opinions were not speculative as he had opined that there was no doubt that the high impact loading work activities contributed to the development and progression of his bilateral knee arthritis. Finally, Dr. Walsh determined that appellant's prior knee injuries were not the sole cause of the

development and progression of his diagnosed osteoarthritis which he attributed in part to the high impact loading work activities in which appellant engaged in while performing his federal job duties.

By decision dated July 2, 2019, OWCP denied modification of the July 30, 2018 merit decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>4</sup> has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>5</sup> These are the essential elements of every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>6</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the identified employment factors.<sup>7</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>8</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background.<sup>9</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s).<sup>10</sup>

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<sup>4</sup> *Supra* note 3.

<sup>5</sup> *K.V.*, Docket No. 18-0947 (issued March 4, 2019); *M.E.*, Docket No. 18-1135 (issued January 4, 2019); *Kathryn Haggerty*, 45 ECAB 383, 388 (1994).

<sup>6</sup> *K.V.*, *id.*, and *M.E.*, *id.*; *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>7</sup> *R.G.*, Docket No. 19-0233 (issued July 16, 2019); *Roy L. Humphrey*, 57 ECAB 238, 241 (2005); *Ruby I. Fish*, 46 ECAB 276, 279 (1994); *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>8</sup> *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

<sup>9</sup> *M.V.*, Docket No. 18-0884 (issued December 28, 2018).

<sup>10</sup> *Victor J. Woodhams*, *supra* note 7.

## ANALYSIS

The Board finds that this case is not in posture for decision.

In his reports dated May 14, 2018 and January 18, 2019, Dr. Walsh opined that appellant's bilateral knee osteoarthritis was permanently aggravated by his employment duties including high impact loading activities. He explained how these activities caused damage to joint cartilage and resulted in a secondary inflammatory process which further accelerated the deterioration of the joint. In his April 28, 2017 report, Dr. Walsh opined that osteoarthritis was the result of repetitive impact loading which caused damage to joint cartilage and resulted in a secondary inflammatory process which further accelerated the deterioration of the joint. He further explained that in the presence of damage to the articular cartilage, chemicals called proteoglycans were released which caused inflammation of the synovial lining of the joint which then led to further breakdown of the articular cartilage, which was characteristic of osteoarthritis. Dr. Walsh acknowledged appellant's prior knee injuries, but opined that his accepted work activities also contributed to his bilateral knee conditions.

Dr. Walsh's reports suggest a pathophysiological explanation as to how appellant's high impact loading activities resulted in a permanent aggravation of his bilateral knee osteoarthritis. Accordingly, while these reports from Dr. Walsh are not fully rationalized, they are sufficient to require further development of appellant's claim.<sup>11</sup>

It is well established that proceedings under FECA are not adversarial in nature and, while appellant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.<sup>12</sup> OWCP has an obligation to see that justice is done.<sup>13</sup>

On remand OWCP shall prepare a statement of accepted facts and obtain a rationalized opinion from a physician in the appropriate field of medicine as to whether the accepted employment incident caused, contributed to, or aggravated the diagnosed bilateral knee condition.<sup>14</sup> If the physician opines that the diagnosed conditions are not causally related, he or she must explain with rationale how or why their opinion differs from that of Dr. Walsh. After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

## CONCLUSION

The Board finds that this case is not in posture for decision.

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<sup>11</sup> *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *D.S.*, Docket No. 17-1359 (issued May 3, 2019); *X.V.*, Docket No. 18-1360 (issued April 12, 2019); *C.M.*, Docket No. 17-1977 (issued January 29, 2019); *William J. Cantrell*, 34 ECAB 1223 (1983).

<sup>12</sup> *Id.*; *A.P.*, Docket No. 17-0813 (issued January 3, 2018); *Jimmy A. Hammons*, 51 ECAB 219, 223 (1999).

<sup>13</sup> *B.C.*, Docket No. 15-1853 (issued January 19, 2016); *E.J.*, Docket No. 09-1481 (issued February 19, 2010); *John J. Carlone*, 41 ECAB 354 (1989).

<sup>14</sup> *M.S.*, Docket No. 20-1095 (issued March 29, 2022); *C.G.*, Docket No. 20-1121 (issued February 11, 2021); *A.G.*, Docket No. 20-0454 (issued October 29, 2020).

**ORDER**

**IT IS HEREBY ORDERED THAT** the July 2, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 11, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board